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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,471	01/15/2004	David L. Morton	WOG 3631.0002	7603
152	7590	12/21/2005	EXAMINER	
CHERNOFF, VILHAUER, MCCLUNG & STENZEL 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204-3157			HARMON, CHRISTOPHER R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,471

Applicant(s)

MORTON ET AL.

Examiner

Christopher R. Harmon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. This application contains claims 24-25 drawn to an invention nonelected with out traverse in the reply filed on 6/13/05.

A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 8, 9, 12, 16, 19-20 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Winski et al. (US 5,336,042).

Winski et al. disclose an applicator apparatus for applying a protective cover 118 to a product comprising platform 74; cover magazine 92 holding a plurality of covers 90; frame supporting cover manipulator 138 with suction cup grippers; cover applicator 190 for pressing the cover and cover fastener mechanism, which roll 200 of (discrete fastener) stretch wrap film 114 for securing the cover and product; transport mechanism 146 for moving manipulator 138 between positions to apply cover to product(s); see figures 3, 4, and 11. The palletized covered load is rotatable on the platform for stretch

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wrap securing (see figure 12). One disclosed embodiment of Winski et al. describes the cover fastener and pressure applicator to include a taping fastener (see column 11, lines 40-58 for securing the cover after folding/pressing relieved side and top portions 120, 122, 124, 126 down over the product(s). The respective adjacent sides of stacked products are considered ends, sides, and tops respectively at least a portion of which are all covered by cover 118; see figure 11.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-5 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winski et al. (US 5,336,042) in view of applicant's admitted prior art (AAPA).

Winski et al. do not disclose the cover manipulator to be able to rotate about a pivot axis, however enabling rotation of the cover manipulator around a vertical axis would have been obvious to one of ordinary skill in the art for adjusting the position as desired in order to better align the cover with the products below. The common knowledge modification is taken to be admitted prior art because applicant failed to traverse the examiner's assertion of official notice. The manipulator 138 is detailed in US Patent 4,988,264 (incorporated by reference; see column 9, line 32) comprises

plate, supporting, multiple arms 112 supporting a plurality of suction cup members 114; see figure 6.

6. Claims 6-7 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winski et al. (US 5,336,042) in view of Hannen (US 5,216,871).

Winski et al. do not directly disclose a vertically movable turntable, however Hansen teaches a vertically movable turntable 21 for stretch wrapping; see figure 1. Winski provide for a control system including sensors for applying the stretch wrap. It would have been obvious to one of ordinary skill in the art to include the teachings of Hannen in the invention to Winski et al. for adjusting the height of the load during the stretch wrapping procedure.

7. Claims 10, 11, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winski et al. (US 5,336,042) in view of Blumle (US 4,896,480).

Winski et al. do not directly disclose the use of pressure rollers on the ends of the pressure applicator/plow cage 190, however Blumle teaches an applicator apparatus for applying a protective cover 2 to a product comprising platform 11; cover magazine 4 holding a plurality of covers 2; frame supporting cover manipulator 14 with suction cup gripper; cover applicator 26 and fastener roller 27 for pressing and securing the cover 2; transport mechanism/piston/cylinder 23/24 for moving manipulator 14 between positions to apply cover 2 to product 3; see figures 2-5. Pressure rollers 27 are mounted on the ends of pressure applicator 26 for applying and securing the cover while moving across its surface. It would have been obvious to one of ordinary skill in the art at the time the

invention was made to include pressure rollers as taught by Blumle in the invention to Winski et al. in order to lessen friction and possible tearing of the cover.

Response to Arguments

8. Applicant's arguments filed 10/3/05 have been fully considered but they are not persuasive. The respective amendments to claims 1 and 12 overcome the previous rejection under 35 USC 102 as being anticipated by Blumle.

However with respect to the arguments concerning Winski et al., Winski et al. clearly disclose a fastener mechanism for applying at least one discrete fastener (stretch film 114) to the covered product(s) and covered portions; see figure 11.

Regarding the common knowledge modification previously taken (Official Notice) in order to adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See MPEP 2144.03(c) and also Chevenard, 139 F.2d at 713, 60 USPQ at 241.

Regarding the limitations of claims 8-9, Winski et al. disclose covering portions of ends, tops, and sides of products. During patent examination, the claims are given the broadest reasonable interpretation consistent with the specification. See *In re Morris*, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). See MPEP § 904.1. The claims fail to differentiate the structure or positional relationship of what is considered the end, sides, and top other than being adjacent. Therefore the invention to Winski et al. anticipate these limitations.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JOHN SIPOS
PRIMARY EXAMINER